IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 154 OF 2004.

S T A T E
Through Public Prosecutor,
High Court of Bombay at Panaji,
Goa. ... Applicant

VERSUS

Dr. Rajendra R. Sakhardande,
r/o Karapur Tisk,
Sanquelim, Goa. ... Respondent.

Shri S.N. Sardessai, Public Prosecutor for the State/ Applicant.

Shri S.D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE: 9TH JULY, 2004.

ORAL ORDER:

The complainant-State seeks leave to appeal under Section 278 of the Code of Criminal Procedure, 1973.

2. The alleged incident took place on 13.12.2000 at about 5.45 p.m. or so and upon complaint filed by the alleged victim Smt. Vishranti Gaonkar (P.W.1) the accused was prosecuted by Bicholim Police Station, on a charge sheet filed. The learned J.M.F.C., Bicholim tried and convicted the accused-respondent under Sections 341, 342, 354 and 509 I.P.C., but on an appeal filed by the accused, the learned Addl. Sessions Judge,

vide his Judgment dated 2.1.2004 acquitted the accused.

3. Heard learned Public Prosecutor Shri Sardessai on behalf of the complainant and Shri Lotlikar, learned Senior Counsel of the accused.

4. As stated by the Supreme Court in the case of **Ramesh Babulal Doshi v. State of Gujarat** (A.I.R. 1996 **S.C., 2035) while** sitting in judgment over an acquittal the appellate court is first required to seek and answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable and if the appellate Court answers the question in the negative the order of acquittal is not to be disturbed.

5. Shri Lotlikar has also placed reliance on the case of **Sudhansu Sekhar Sahoo v. State of Orissa** (A.I.R. 2003 S.C. 2136) in support of the proposition that the sole testimony of the victim of sexual offence could be a basis for the conviction provided it is safe, reliable and worthy of acceptance.

6. In the case at hand, the learned Addl. Sessions Judge has considered the versions given by the alleged victim namely P.W.1 Vishranti and her husband P.W.3 Vatu and has tested their version on the anvil of

probabilities and has further found that the said versions could not be accepted and for that reason has given benefit of doubt to the accused, though the aforesaid conclusion might not have been stated by the Addl. Sessions Judge in so many words.

7. Admittedly P.W.1 Vishranti, if at all she was being examined by the accused internally for finding out her pregnancy and in case P.W.1 Vishranti found the said examination had amounted to outraging her modesty, the least P.W.1 Vishranti could have done was to call for help, help which was otherwise available outside the Clinic in the presence of her husband (P.W.3 Vatu) and help which might have been also available inside the house of the accused in the presence of the other female members of the family of the said accused, more so, because it was stated that the accused had just returned along with P.W.1 Vishranti and her husband Vatu along with the daughter of the accused after they had gone for distribution of invitation cards for the marriage of the said daughter. P.W.1 Vishranti chose not speak a word about what transpired between the accused in his Clinic even after she came out from the said clinic and waited to narrate the incident to her husband P.W.3 Vatu until she reached the bus stand at a distance of about 7 to 8 kms. Although thereafter it was stated by both P.W.1 Vishranti and P.W.3 Vatu that they went and narrated the

incident to P.W.2 Dr. Fernandes, the latter did not at all support their version. As rightly pointed out on behalf of the accused, if P.W.3 Vatu after listening to the story of P.W.1 had stated that he had become furious and told her that he would go back to the accused and question him about the same, apparently there is no reason whatsoever as to why the said P.W.3 did not go and question the accused or for that matter, did not even go to the Police Station and lodge a complaint against the accused. There is also no explanation for the delay of not only going to the police station but also to P.W.6 Dr. Rodrigues who again has not at all supported the version of P.W.1 that anything in particular could have been physically wrong with her on account of the acts allegedly done by the accused. The version of P.W.1 Vishranti was not even supported in material particulars wherever it could have been otherwise supported by her own husband P.W.3 Vatu and there were material contradictions in their version which have been taken note of by the learned Addl. Sessions Judge. The case at hand was not a case where based on the evidence two views were reasonably possible. In fact, the view held by the learned Addl. Sessions Judge on the scrutiny of the evidence of P.W.1 Vishranti and P.W.3 Vatu coupled with the fact that their version was not corroborated by P.W.2 Dr. Fernandes was the only possible view. The learned

Sessions Judge has rightly refused to accept the version given by the said witnesses as being improbable and therefore has given the benefit of doubt to the accused. In such a situation, the State does not deserve to be granted leave to appeal.

8. Application rejected.

N.A. BRITTO, J.

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